

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 BLAKE and JENNA MILLER, Individually
and on Behalf of C.M., a Minor Child,

4 Plaintiffs

5 v.

6 UNITED STATES OF AMERICA,

7 Defendant
8

Case No.: 2:19-cv-01293-APG-VCF

**Order Denying Motion for Appointment of
Expert**

[ECF No. 50]

9 The United States moves for appointment of a neutral expert under Federal Rule of
10 Evidence 706. ECF No. 50. It argues that a neutral diagnostic radiologist with expertise in the
11 review of fetal anatomy ultrasounds will help in the evaluation of “a key issue of this case,
12 namely, the applicable standard of care required of a diagnostic radiologist interpreting a 20-
13 week fetal anatomy ultrasound.” *Id.* at 7. The plaintiffs oppose this request as unnecessary,
14 given that both parties have retained numerous experts, including “two on each side [who have]
15 opined and testified on the radiology issue alone.” ECF No. 51 at 2.

16 Rule 706 permits district courts, in their discretion, to appoint a neutral expert. “Expert
17 witnesses should not be appointed where they are not necessary or significantly useful for the
18 trier of fact to comprehend a material issue in a case.” *Johnson v. Dunnahoe*, Case No. 1:08-cv-
19 000640-LJO-DLB PC, 2013 WL 396009, at *2 (E.D. Cal. Jan. 31, 2013). “The fact that the
20 parties’ experts have a divergence of opinion does not require the district court to appoint experts
21 to aid in resolving such conflicts.” *Oklahoma Natural Gas Co. v. Mahan & Rowsey, Inc.*, 786
22 F.2d 1004, 1007 (10th Cir. 1986) (citing *Georgia-Pacific Corp. v. U.S.*, 640 F.2d 328, 334 (Ct.
23 Cl. 1980)).

1 Here, both parties have retained several experts—including four on the specific radiology
2 issues—all of whom are apparently qualified to offer opinions on the relevant issues.

3 The appointment by this Court of yet another expert is not likely to enlighten or
4 enhance the ability of the Court to determine the pending issue. While
5 appointment of an expert by the Court would ultimately add an additional witness
6 to one side or the other, it is axiomatic that weight of the evidence is not to be
7 determined by the number of witnesses that testify. Where as here, the experts
8 retained by the parties are well qualified and capable of presenting sufficient
9 information to permit a just resolution of the pending issue, appointment of yet
10 another expert is not warranted.

11 *Mallard Bay Drilling, Inc. v. Bessard*, 145 F.R.D. 405, 406 (W.D. La. 1993). Here, the
12 adversarial process should be sufficient to allow the parties to present and cross-examine the
13 expert testimony. A court-appointed expert is not necessary.

14 I THEREFORE ORDER that the United States' motion for appointment of an expert
15 (ECF No. 50) is denied.

16 DATED this 14th day of April, 2021.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE